

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4064 OF 2024**

1. Krishi Rasayan Exports Pvt. Ltd.,
At:208, Pride Icon, At No.22-1 & 1 B,
Kharadi, Mundhve Road Kharadi,
Tq. Haveli, Dist. Pune-411014
2. Sachin s/o Machindra Gore,
Age: 44 Years, Occu-Deputy General Manager
of Krishi Rasayan Exports Pvt. Ltd.,
R/o-208, Pride Icon, At No.22-1 & 1 B,
Kharadi, Mundhve Road Kharadi,
Tq. Haveli, Dist. Pune -411014
3. Sachin s/o Dharmendra Patil,
Age: 41 Years, Occu-Regional Manager of
Krishi Rasayan Exports Pvt. Ltd.,
R/o-Flat No.13, Vyankatesh Krupa Apartment,
Dindori Road, Jijamata Chowk, Kalanagar,
Nashik, Dist. Nashik, Maharashtra-422004

...Petitioners

Vs.

1. The State Of Maharashtra,
Through Pandharpur Taluka Police Station,
Dist. Solapur, Maharashtra.
(Copy to be served on -
The Office of the Public Prosecutor,
Criminal Appellate Side of Hon'ble High Court
of Judicature of Bombay Bench at Bombay)
2. Mr. Suryakant Bhausahab More
Age: 40 Years, Occu: Service Quality
Control Inspector cum Taluka Agriculture
Officer, Pandharpur
C/o: Taluka Agriculture Office,
Pandharpur, Dist. Solapur

.....Respondents

Mr. Ganesh Shinde (Through VC), with Adv. Ratan L. Adhe, for the

Petitioners.

Mr. Vinod Chate, APP for the Respondent No.1-State.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON : 30th SEPTEMBER, 2024.

PRONOUNCED ON : 07th OCTOBER, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J) :-

1) Petitioners seek to quash F.I.R. No.510 of 2024 dated 20th June 2024 registered with the Pandharpur Taluka Police Station, Solapur Rural for offences punishable under Sections 420 and 427 read with 34 of the Indian Penal Code ('IPC') and Sections 3, 13 and 29 of the Insecticides Act, 1968.

2) Petitioner No.1 is a Company incorporated under the Companies Act, 1956 and Petitioners No.2 and 3 are the Deputy General Manager and the Regional Manager of the Petitioner No.1 company respectively. Respondent No.1 is the State of Maharashtra and Respondent No.2 is the First Informant namely the Service Quality Control Inspector-cum-Taluka Agriculture Officer, Pandharpur.

3) Facts of the case in brief are as under:

3.1) The Respondent No.2 recorded a complaint dated 5th December 2023 made by a farmer, one Vasant Damu Shinde, in the Taluka Agriculture Office of Pandharpur alleging that upon spraying the insecticide of the Petitioner No.1 Company, a bunch of grapes in his Vineyard were burnt. He demanded an inspection of the incident of the burnt grapes and also sought

compensation for his loss from the Company. He attached bills of purchase of the said insecticide.

3.2) On 7th December 2023, another farmer namely Samadhan Arjun Ghodake also made a complaint stating that spraying of the insecticide of the Petitioner No.1 Company in his Vineyard resulted in the grapes burning. He also demanded an inspection and compensation. Bills of purchase of the said insecticide were also provided.

3.3) On 8th December 2023, several other farmers made the same complaint regarding burning and drying of grapes upon spraying the insecticide of the Petitioner No.1 Company. They all named the insecticide to be Thiophanate-Methyl 70% WP.

3.4) On 18th December 2023, inspection was carried out by Experts from the Agriculture Department. It was revealed that use of the said insecticide caused the grapes to dry and burn. Panchanama of the each incident was recorded and the damage was quantified as ascertained. The loss of each farmer was quantified.

3.5) On 8th January 2024, the First Informant himself along with one Mr. Sagar Bhosale, Agricultural Assistant, Devgaon went to the shop of Audumbar Dnyaneshwar Disale namely Yashkiran Agro Agencies, which stocked the insecticide of the Company and seized a sample of the insecticide. On 9th January 2024, the seized and sealed insecticide was sent to the Insecticide Testing Laboratory, Krushi Bhavan, Shivajinagar, Pune. A

report dated 15th January 2024 was generated. It was revealed that the said insecticide contained 1.74 % of Glyphosate and 0.93% of 2-4-D, which chemicals are extremely harmful for grapes. Usage of Thiophanate-Methyl on grapes did not have approval of the competent Authority and the Company was found to have misrepresented and misinformed the farmers and induced them to purchase and use the same. The total loss was quantified at Rs.80,16,000/-. Hence, it was alleged that from 5th December 2023 up to 15th January 2024, the Company and its Representatives etc., had stocked its insecticide for sale in the shop named Yashkiran Agro Agencies in Pandharpur, induced the farmers to purchase the said insecticide by misrepresenting that the said chemicals had the requisite approval from competent authority, resulting in damage to the grapes in the Vineyards of farmers in Pandharpur. In this premise, the F.I.R. is registered.

4) Mr. Ganesh Shinde, learned counsel appeared for the Petitioners and Mr. Vinod Chate, learned APP represents the State.

5) Mr. Shinde submitted that on 31st January 2024, Mr. Suryakant More, the First Informant had already filed a private complaint bearing S.C.C.No.186 of 2024 in the Court of the Judicial Magistrate First Class, Pandharpur under the provisions of the Insecticides Act, 1968. The same Officer has now filed the impugned F.I.R which is accordingly not maintainable. According to him, the Petitioners are nowhere concerned with the offense in question and continuance of proceedings against them is

nothing but abuse of process of law. He also submits that the offence punishable under the I.P.C. for less than three years is non-cognizable offence and F.I.R. in that regard is not maintainable. Section 79 of the Insecticides Act provides for punishment up to maximum two years imprisonment or fine or both. He further submits that Sections 420 and 427 of I.P.C. are not made out as there is no dishonest inducement to the farmers to purchase the said insecticide and there is no mischief committed by them. He contends that the Petitioners No.2 and 3 are in Sales and Marketing Department and are not connected with the offence. He thus urged the Court to quash the F.I.R. and allow the Petition.

6) Per contra, Mr. Chate, learned APP produced before us the record of investigation to contest the submissions of Mr. Shinde. He drew our attention to the report of the Insecticide Analyst, which clearly demonstrated the insecticide to be mis-branded. The report clearly reveals existence of the chemical Glyphosate and 2-4-D weedicide. He also pointed to a letter dated 5th July 2024 issued by the Agricultural Department of the Maharashtra State to the Police Inspector, Pandharpur Police Station clearly conveying that the Forensic Report pertaining to the said insecticide of the Petitioner No.1 Company revealed that the said insecticide was being sold without approval. It was only after the receipt of this Report that the F.I.R. was registered. Mr. Chate, thus urges that the Petition be dismissed.

7) We have heard the counsel and perused the record with their

assistance. We have also perused the original record of investigation produced before us by Mr. Chate.

8) Insofar as the first contention of the Petitioners is concerned regarding non-applicability of Section 420 of the I.P.C. to the act alleged in the present F.I.R., it is necessary to consider the ingredients of offence of cheating.

8.1) Section 420 of the Penal Code reads thus:

“420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9) The ingredients to constitute an offence under Section 420 are as follows:

9.1) A person must commit the offence of cheating under Section 415; and

9.2) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

10) Cheating is an essential ingredient for an act to constitute an offence under Section 420 of the I.P.C. A similar view has been taken by the Supreme Court in the cases of *Archana Rana v. State of Uttar Pradesh & Anr.*,¹ *Deepak Gaba and Ors. v. State of Uttar Pradesh & Anr.*;² and *Mariam Fasihuddin & Anr. v. State by Aduodi Police Station & Anr.*³

11) It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

- (i) the deception of any person;
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
- (iii) dishonest intention of the accused at the time of making the inducement.

12) The allegations in the present case clearly reveal that despite having knowledge of the ingredients of the insecticide, the same was

1 (2021) 3 SCC 751 : 2021 INSC 135.

2 (2023) 3 SCC 423 : 2023 INSC 1.

3 2024 SCC OnLine SC 58 : 2024 INSC 49.

offered for sale to innocent farmers at the shop namely Yashkiran Agro Agencies. Further, the Company and its Representatives were bound to be aware of the ramification of spraying the said dangerous chemicals on grapes. Moreover, there was no approval of the competent Authority under the Insecticides Act for the sale of the said insecticide. The innocent farmers were thus deceived and induced to purchase the said insecticide as being useful in preserving the grapes by killing the pests infesting the grape crop in the Vineyards and offered for sale in the said shop. *Prima facie*, the offence of cheating is clearly made out and the act of the Petitioners satisfies the ingredients of the offence.

13) The Petitioners have claimed that Nos.2 and 3 of them were Marketing and Sales Executives and were not involved in the commission of the said offences as alleged. The Supreme Court in the case of *Susela Padmavathy Amma v. M/s, Bharti Airtel Ltd.*⁴ has held as under:

“10. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing

4 SLP (Criminal) No.12390-12391 of 2022, dtd. 15th March 2024.

director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.”

14) In the present case, there is nothing on record to indicate the duties and scope of work of the Petitioners No.2 and 3. In fact, the Petition itself states them to be the Deputy Head and the Regional Head respectively. There is no averment in the entire Petition as to the scope and ambit of the duties and the authority of these Petitioners. At this stage, it is not for this Court to determine the defence of the Petitioners and conduct a mini-trial in that regard. They will have ample opportunity to make good their defence in the ensuing trial by adducing evidence in that regard.

15) In the facts and circumstances of the present case and considering the settled legal position, a plain reading of the F.I.R. discloses commission of a cognizable offence. We are thus not inclined to quash the F.I.R. impugned herein.

16) In view of the foregoing, the Petition is dismissed.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)